



west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: RJ Recycling, LLC
300 Kanawha Ave.
Nitro, WV 25143

DATE: November 17, 2011

ORDER NO.: 7041

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to RJ Recycling, LLC (hereinafter "RJ Recycling, LLC").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. RJ Recycling, LLC operates a scrap metal recycling facility in Riverside, Kanawha County, West Virginia. RJ Recycling, LLC was granted permission to discharge stormwater associated with this industrial activity pursuant to the conditions set forth in WV/NPDES General Water Pollution Control Permit No. WV0111457, General Permit Registration No. WVG610062 on September 17, 2004.
2. On December 17, 2007, a permit modification was approved by the West Virginia Department of Environmental Protection (WVDEP) for RJ Recycling, LLC, Riverside Yard, WV/NPDES General Permit Registration No. WVG610062. This modification was initiated to comply with Order No. 6217 and included treatment structures for outlet #002 and outlet #003. It also included the elimination of outlets #004 and #005 and establishment of outlet #003 in a new location. These changes were illustrated in an updated Stormwater Pollution Prevention Plan (SWPPP) attached to the aforementioned permit modification application.
3. On November 19, 2009, WVDEP personnel conducted a routine inspection of the facility and observed and documented the following:

Promoting a healthy environment.

- a) RJ Recycling, LLC has failed to implement the controls and establish outlet #003 illustrated in the SWPPP. Notice of Violation (NOV) No. I09-20-127-JHH was issued for violating its WV/NPDES permit (Section B.17.A.a) (1)(G)(2)) by failing to implement the description of stormwater pollution controls appropriate for the facility.
 - b) RJ Recycling, LLC has failed to comply with Order No. 6217 dated the 22nd day of May, 2007. NOV No. I09-20-126-JHH was issued for failure to comply with Order No. 6217.
 - c) No secondary containment around several totes of de-icer. Evidence of petro-chemical spillage at fueling area and in maintenance shop was observed. Evidence of petro-chemicals in ditch line near fueling/maintenance area was observed. Volume not being maximized in secondary containment for fuel and used oil containers; spillage had not been removed. NOV No. I09-20-128-JHH was issued for violating its WV/NPDES permit (Section B.17.B.) by failing to comply with the Groundwater Protection Plan which shall be prepared in accordance with the requirements of Title 47, Series 58, Section 58 Section 4.11. (Groundwater Protection Regulations).
 - d) The permittee failed to implement controls on site that are illustrated in the facility's SWPPP and therefore failed to comply with all conditions of its WV/NPDES permit. This is a violation of its WV/NPDES permit (Appendix A I. Management Conditions 1. Duty to Comply). NOV No. I09-20-129-JHH was issued to RJ Recycling, LLC.
 - e) The permittee failed to at all times operate and maintain all facilities and systems of treatment and control (and related appurtenances) to achieve compliance with the conditions of its WV/NPDES permit (Appendix A II. Operation and Maintenance, 1. Proper Operation and Maintenance). Controls designed to achieve permit compliance are not in place in accordance with the facility's SWPPP. NOV No. I09-20-130-JHH was issued.
 - f) The permittee failed to take samples for the purpose of monitoring that are representative of the monitored activity. Outfall 002 and 003, and the monitoring conducted at these outfalls, are not representative of what is illustrated in the SWPPP. NOV No. I09-20-131-JHH was issued for violating its WV/NPDES permit (Appendix A III. Monitoring and Reporting 1. Representative Sampling).
- 4. On January 21, 2010, WVDEP received the discharge monitoring reports for 2009. Outlet 001 continues to show benchmark exceedences for total recoverable zinc and total recoverable iron. Outlet 002 exceeded benchmark values for total suspended solids, total recoverable zinc, total recoverable lead, total recoverable copper, total recoverable aluminum, total recoverable iron, chemical oxygen demand, and oil and grease.
 - 5. On March 8, 2010, WVDEP received an updated pollution prevention plan. The plan states: "Outfalls 002 and 003, as represented in the NPDES Permit and the SWPPP, should be collected as a pond discharge. These outlets are currently not discharging via the "as designed" ponds (as designed in response to Order No. 6217) as the pond construction has not been initiated. RJR originally intended to complete construction

activities by June 2008. However, presence of the fluff piles has delayed the construction of the proposed ponds. Pursuant to NOV #OD 09-20-123-JHH, a plan is in place to obtain expedited removal of the fluff. A proposed corrective action plan and schedule is as follows:

- Removal of existing fluff pile in the vicinity of Pond/Outlet 003 by November 2010.
- Initiate pond construction at Outlets 002 and 003 in September 2010.

Interim measures to control runoff and reduce the discharge concentrations are being implemented. This SWPPP has been revised to include the proposed treatment measures located at Outlets 002 and 003, as well as interim measures to control runoff prior to pond construction.”

6. On March 9, 2010, RJ Recycling entered into Consent Order # CO-R-13-E-2010-2 with the Division of Air Quality to address permit violations. The shredder fluff stockpiles had not been identified in the permit application. Order # CO-R-13-E-2010-2 requires RJ Recycling to ship off site a minimum of 2000 tons of shredder fluff per calendar month and to have the stockpiles removed by November 1, 2010. Stipulated penalties of \$1000 per day are imposed after November 1, 2010.
7. On May 5, 2010, Potesta Associates, representatives of RJ Recycling/Poor Charlie's, met with WVDEP representatives from Office of Environmental Remediation and Division of Water and Waste Management to discuss the remediation of the site. RJ Recycling contended that the existing shredder fluff pile delayed the pond construction at Outlet 003, but was being removed at an expedited rate to allow pond construction to begin in September 2010. RJ Recycling stated that it discontinued shredder operations and installed additional controls to reduce concentrations within the stormwater runoff. RJ recycling also maintained that it began reclamation work on the western portion of the site in the area previously draining to Outlet 003. RJ Recycling remains in non-compliance with the WV/NPDES permit, because the on-site conditions do not match the pond design provided to WVDEP as part of the permit modification.
8. On February 15, 2011, WVDEP personnel conducted a routine inspection of the facility, and observed and documented the following:
 - a. Shredder operations at the site had ceased.
 - b. The conditions and scale of the activity anticipated in the December 2007 Permit Modification no longer existed at the site.
 - c. The working footprint of the yard was being scaled down in preparation for Brownfield remediation work expected to begin later in the year. The facility should modify its WV/NPDES permit to reflect protections needed for current operations.
 - d. Discharge points next to the shop area were not included in the WV/NPDES permit. These outlets should be sampled during the next event in anticipation of the modification request.
 - e. The facility made improvements in site management and housekeeping, specifically in terms of waste removal and control.
 - f. A portion of the shredder material had been shipped off-site for processing.
 - g. The ditchlines leading to 002 and 003 were not stabilized against erosion.

9. On June 22, 2010, WVDEP personnel and representatives of RJ Recycling, LLC met to discuss the terms and conditions of this Order.
10. On February 22, 2011, representatives of RJ Recycling, LLC and WVDEP conducted an additional meeting to discuss current operations and upcoming facility plans. RJ Recycling, LLC stated that shredder operation, previously located in the Outlet 003 drainage area, had been discontinued at the Riverside Yard. Further, RJ Recycling, LLC maintained that the shredder fluff piles were removed from the area draining to Outlet 003. RJ Recycling, LLC also expressed that it had initiated efforts to reclaim the western portion of the site.
11. On March 7, 2011, RJ Recycling, LLC submitted correspondence to WVDEP. The letter includes a Supplemental Environmental Project (SEP) proposal consisting of improvements to the stream bank(s) of Pond Run and an unnamed tributary of Pond Run within the boundaries of the RJ Recycling, LLC yard in Parkersburg, WV. The SEP is an environmentally beneficial plan undertaken by RJ Recycling, LLC to mitigate a portion of the penalty assessed in this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. RJ Recycling, LLC shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of the effective date of this Order, RJ Recycling, LLC shall submit for approval a proposed corrective action plan and schedule, outlining action items and completion dates for how and when RJ Recycling, LLC will achieve compliance with all terms and conditions of the permit and/or pertinent laws and rules. The corrective action plan shall be submitted to:

**Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the corrective action plan and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable

corrective action plan and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. RJ Recycling, LLC shall complete the Supplemental Environmental Project (SEP) according to the plan and schedule proposed in its March, 7, 2011 correspondence. The approved SEP proposal shall be incorporated into and become part of this Order, as if fully set forth herein.
4. Within sixty (60) days after completion of the SEP, RJ Recycling, LLC shall submit an SEP Completion Report, listing expenditures and detailing all actions performed in regard to the SEP. The Report shall be mailed to the addresses contained within Order for Compliance No. 2. Failure to complete the SEP in accordance with the approved plan and schedule is a violation of this Order, and RJ Recycling, LLC shall be required to pay the penalties stipulated in Order for Compliance No. 5.
5. Because of RJ Recycling, LLC's Order and permit violations, RJ Recycling, LLC shall be assessed a civil administrative penalty of thirty-five thousand seven hundred eighty dollars (\$35,780) to be paid as follows:
 - a. Seven thousand one hundred eighty dollars (\$7,180) shall be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order.
 - b. The remaining twenty-eight thousand six hundred dollars (\$28,600) shall be applied to the WVDEP approved Supplemental Environmental Project (SEP) proposed by RJ Recycling, LLC on March 7, 2011. In the event that the SEP is not completed as proposed, the entire value placed upon the SEP shall become due and payable upon demand by WVDEP.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. RJ Recycling, LLC hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, RJ Recycling, LLC agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, RJ Recycling, LLC does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding RJ Recycling, LLC other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which she may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, RJ Recycling, LLC shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after RJ Recycling, LLC becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which RJ Recycling, LLC intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of RJ Recycling, LLC (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving RJ Recycling, LLC of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject RJ Recycling, LLC to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on RJ Recycling, LLC, its successors and assigns.

7. This Order shall terminate upon RJ Recycling, LLC's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Roland Fisher, General Manager
RJ Recycling, LLC

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

revised January 2009